

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

MFA.No. 491 of 2001()

OPMV.2365/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANTS:

1. SOBHANA W/o LATE VENUGOPALAN, PATTANATH HOUSE
P.O. THALASSERY, DESAMANGALAM, THRISSUR DISTRICT
 2. MINOR VIPIN, AGED 11, S/o 1st petitioner
 3. MINOR VINIL AGED 5 S/o 1st PETITIONER
 4. SATHIDEVI W/o BHASKARAN, PATTANATH HOUSE,
THALASSERY PO, DESAMANGALAM, THRISSUR
(MOTHER OF DECEASED)
- (MINOR PETITIONERS 2 AND 3 REPRESENTED BY THEIR NATURAL
GUARDIAN NEXT FRIEND THE MOTHER SOBHANA-FIRST PETITIONER)

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS:

1. ANGELINE PINTO 76, ABDUL GOKHALE ROAD, NORTH BOMBAY
2. KAMALAKSHI AMMEENA S/o SHAKER AMMEENA,
M.M.ROAD, MANGALORE 3
3. THE NATIONAL INSURANCE CO. LTD, BOMBAY

R1 BY ADV. SRI.LAL GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22/01/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.F.A. No 491 of 2001

Dated: 22nd January 2007.

JUDGMENT

Krishnan, J.

This is an appeal preferred against the award of the Claims Tribunal, Trichur in O.P. (M.V) No 2365 of 1997. Claimants are the wife, children and mother of the deceased Venugopalan who died in a motor accident. He was employed abroad and the Tribunal awarded a total compensation of Rs 2,82,000/-. It is against that decision the present appeal is preferred.

2. Heard both sides.

3. Learned counsel for the appellants would strongly contend that from 1989 onwards the deceased was working abroad and he was having a considerable income which is equivalent to Rs 13,000/- and when he came on leave he met with the unfortunate accident and died. The Tribunal without any basis or reason had fixed his monthly income at Rs 2,000/- and had calculated the compensation. There appears to be considerable force in the said argument. Learned counsel for the appellant has made available to

us passport copy which would show that the deceased had come on leave to India on 3.8.1996 and the accident took place on 5.8.1996. So the fact that he was employed abroad is proved by documentary evidence. Before the Tribunal relevant documents were produced to show that the deceased was sending money regularly to his wife and his wife had deposed that during the period 1993 to 1996 the deceased had sent an amount of Rs 1,86,623/- which will work out to approximately Rs 5,156/- per month. Therefore learned counsel for the appellant would submit that it must be taken as the dependency rate. On the other hand learned counsel for the Insurance Company would contend that the amount cannot be fixed at Rs 5,000/- or Rs 6,000/-. Being a driver, Tribunal has taken only reasonable income that would have been earned by an Indian driver. At the outset, it has to be stated that even in India a driver would have been getting Rs 5,000/- at that time. Since the deceased was employed in Gulf country certainly he would have earned much more money than what he would have earned in India. Considering the fact that he was a driver by profession and as he had completed decades of service in Gulf we feel it is only just and proper to fix Rs 6,000/- as the monthly income and deduct 50% for his personal expenses and take the dependency rate at Rs 3,000/-. It is also to be stated that there is no documentary evidence available before court to

show that how long he would be in Gulf country. Therefore we have also taken that fact into consideration while fixing monthly income as well as the dependency rate. Thus we take monthly dependency rate at Rs 3,000/-, i.e, Rs 36,000/- as annual dependency and by applying 15 the total dependency would come to Rs 5,40,000/-. The Tribunal has only awarded Rs 2,40,000/- towards loss of dependency. Therefore the claimants are awarded additional compensation of Rs 3 lakhs under that head. So far as amounts awarded under other heads are concerned, Tribunal has awarded just and reasonable compensation and it does not call for any interference.

In the result, the appeal is partly allowed and the claimants are awarded additional compensation of Rs 3,00,000/- with 7% interest on the said sum from the date of petition till date of realisation and the Insurance company is directed to deposit the amount within three months from the date of receipt of a copy of this judgment.

Sd/-

(K.S.RADHAKRISHNAN, JUDGE)

Sd/-

(M.N. KRISHNAN, JUDGE)

22/01/2007

en/

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